

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

MARIA SANJUANITA HERRERA
Plaintiff

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§
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VS.

CAUSE NO.: 7:20-CV-353

WAL-MART STORES TEXAS LLC
Defendant

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§
DEMAND TRIAL BY JURY

**DEFENDANT WAL-MART STORES TEXAS L.L.C.'S NOTICE OF REMOVAL
UNDER 28 U.S.C. § 1441(B) (DIVERSITY)**

TO THE HONORABLE JUDGE OF THIS COURT:

NOW COMES WAL-MART STORES TEXAS L.L.C., Defendant in the above styled and numbered cause and removes the above action from the 206th Judicial District Court, Hidalgo County, Texas to the United States District Court for the Southern District of Texas, McAllen Division and files this its Notice of Removal pursuant to 28 U.S.C. § 1334(c)(2), 1452(a), and Rule 9027.

1. On September 30, 2020, an action was commenced against Defendant **WAL-MART STORES TEXAS L.L.C.** in the 206th Judicial District Court of Hidalgo County, Texas styled *Maria SanJuanita Herrera vs. Wal-Mart Stores Texas L.L.C.*; Cause No. C-3388-20-D. *A copy of that suit is attached hereto as Exhibit 1.*
2. **WAL-MART STORES TEXAS L.L.C.** was served on October 5, 2020, and timely filed an Answer with the State Court. *A copy of the citation is attached hereto as Exhibit 2.*
2. In accordance with Local Rule 81, the following constitutes all of the executed process, pleadings, and orders served upon Plaintiff and Defendant in this action:
 1. Plaintiff's Original Petition;

2. Copy of Citation of Defendant Wal-Mart Inc.;
3. Docket Sheet;
4. Defendant's Original Answer;
5. Defendant's Jury Demand.
6. Defendant's Notice of Removal (State Court)

In addition, Defendant includes a copy of the docket sheet of the state court matter, a *copy of which is attached hereto as Exhibit 3.*

3. Plaintiff has filed the lawsuit against the Defendant, **WAL-MART STORES TEXAS L.L.C.** for damages allegedly resulting from a slip and fall at a Wal-Mart store located in McAllen, Hidalgo County, Texas. The claims made include theories of negligence, premises liability, vicarious liability and proximate cause. Specifically, Plaintiff alleges that Plaintiff, at all material times, was an invitee on the premises of Defendant **WAL-MART STORES TEXAS L.L.C.** at the time of her injuries and damages. Plaintiff alleges that she slipped and fell near the store entryway causing her to sustain injuries and damages. Plaintiff alleges that Defendant placed a social distancing sign on the sidewalk that was made of plastic and/or laminated and was insufficiently and/or improperly adhered to the surface of the sidewalk. Plaintiff alleges that the slippery laminated sign that was improperly and insufficiently adhered to the sidewalk was a dangerous condition on Defendant's premises that caused Plaintiff to slip, fall and sustain injuries and damages. Plaintiff alleges that Defendant knew or, in the exercise of ordinary care, should have known that the dangerous condition existed, breached its duty of ordinary care by failing to adequately warn Plaintiff of the condition, and failed to make the condition reasonably safe. Plaintiff alleges that Defendant was the sole proximate cause

or a proximate cause of the incident and the injuries and damages suffered by the Plaintiff.

4. In her Original Petition, Plaintiff pleads that she is seeking monetary relief from Defendant in an amount that is more than \$200,000.00, but less than \$1,000,000.00. As such, **WAL-MART STORES TEXAS L.L.C.**, submits that the amount in controversy is in excess of \$75,000.00 and removal is appropriate pursuant to 28 U.S. § 1441(b).
5. In her Original Petition, Plaintiff pleads that she is a resident of Edinburg, Hidalgo County, Texas, as such, a citizen of the State of Texas.
6. Defendant **WAL-MART STORES TEXAS L.L.C.**, was, at the time this suit was filed, and still is a Delaware limited liability company organized and existing under the laws of the State of Delaware. Its principal place of business is 702 SW 8th Street, Bentonville, Arkansas, 72716.
7. This case is a civil action of which this court has original jurisdiction under 28 U.S.C. § 1334(c)(2), 1452(a), and is one which may be removed to this Court pursuant to 28 U.S.C. § 1441(a)(b) and 1446(b). This is a civil action in which Plaintiff's state citizenship, in her pleadings, is different from that of the Defendant **WAL-MART STORES TEXAS L.L.C.** Thus, there is complete diversity between the true parties in interest. The amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.
8. Copy of the Notice of Removal filed in the state court is *attached hereto as Exhibit 6*.
9. Copies of all pleadings, process, orders and other filings in the state court are attached to this notice as required by 28 U.S.C. § 1446(a).

10. Venue is proper in this district under 28 U.S.C. § 1441(a) because the state court where the suit has been pending is located in this district.
11. Defendant will promptly file a copy of this notice of removal with the clerk of the state court where the suit has been pending.
12. Defendant demanded a jury in the state court suit.
13. For the foregoing reasons, Defendant **WAL-MART STORES TEXAS L.L.C.** asks the Court to remove the suit to The United States District Court, Southern District of Texas, McAllen Division.

Respectfully Submitted,

**THORNTON, BIECHLIN,
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BY: *IS/ Rafael Garcia, Jr.*
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**ATTORNEY FOR DEFENDANT
WAL-MART STORES TEXAS L.L.C.**

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served on all parties, via e-mail, pursuant to Texas Rules of Civil Procedure, on this the 4th day of November 2020.

Via Email: email@cisneroslawfirm.com

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